

United States Court of Appeals
for the Ninth Circuit

ON APPEAL FROM THE DISTRICT COURT FOR
THE EASTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

In the Matter of S. P. BEECHER,
Farm Debtor.
No. B-7848

The Leavenworth State Bank,
The Federal Land Bank of Spokane,
Homer Smithson, John McCoy,
Lyle Timpe, Ben Maxwell,
Leavenworth Fruit Co. and
Eagle Transfer and Storage Co.,
Arrow Transfer & Storage Co.,
Appellees.

PETITION BY S. P. BEECHER, FARM DEBTOR,
UNDER SECTION 75 OF THE BANKRUPTCY ACT

PETITION FOR REHEARING

Presented by
S. P. BEECHER, *Farm Debtor,*
Cashmere, Washington

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United States Court of Appeals
for the Ninth Circuit

In the Matter of
S. P. BEECHER,
Farm Debtor.

No. 14979
and Misc. No. 519
March 28, 1956.
District Court No. 7848

PETITION FOR REHEARING

To the Honorable Chief Judge Denman, and Pope
and Chambers, Circuit Judges.

Comes now S. P. Beecher, the Farm Debtor herein,
and Prays the Court for a rehearing on the matters
heard on February 27, 1956, on the following grounds.

Farm Debtor is not an attorney, and has been denied
an attorney or the services of the Conciliation Com-
missioner, or money to employ an attorney throughout
the entire proceedings.

Although the rents and profits from the property
involved, have been in excess of \$100,000.00 and the
appraised value for redemption has been determined
at \$25,550.00, *or over four times the amount required
under the law to liquidate his indebtedness, and as the
secured creditor the Federal Land Bank of Spokane
said in open Court on May 7, 1947, Tr. 12084, Vol. 1,
p. 126, quote:*

MR. NEWTON: "I want to state further that Mr. Beecher has expressed the idea he wants to pay his creditors. His conduct doesn't show any such thing. There's enough money in the hands of the receiver and Conciliation Commissioner to pay off everything he owes, leave the farm free and clear, and money to boot, and the creditors will join in any effort he wants to make." And see: p. 47, same date, May 7, 1947.

MR. BEECHER: "Your Honor, there's—I don't know the amount the receiver has got: I know that I have got thirty thousand dollars that could be made available to me, and a man with thirty thousand dollars in my account but which is being refused me, until the Court release—why more than enough to redeem and pay all my debts. The Court has got me tied up so I can't get out from Frazier-Lemke.

THE COURT: Do you want this money applied to pay your creditors?

MR. BEECHER: I do.

THE COURT: I'll assist you in that, if it can be done; at least a partial distribution.

MR. BEECHER: The amount the receiver has still got, I'm questioning the final report of the receiver. I'll admit under the circumstances I can't expect that money, but I can expect this thirty thousand dollars that are proceeds of last year's crop. I don't want this

thirty thousand dollars to buy outside property, or dissipate or scatter around. I want to liquidate my debts and get out from under.”

Again Farm Debtor wishes to remind the Court that the final appraisal for redemption purposes was \$25,550.00 and over \$30,000.00 available for redemption at that time. The Act very definitely states that the final appraised value of the property is the principal which the Farm Debtor is liable for to receive his property free and clear of incumbrances. See: Section 75 (s) (3).

The General Bankruptcy Act Section 65 (e) reads:

“A claimant shall not be entitled to collect from a bankruptcy estate any greater sum than shall accrue pursuant to the provisions of the Act.”

The Supreme Court has repeatedly said that Section 75 (s) is an orderly proceeding and cannot be deviated from. The opinion by Judge Douglas in *Wright v. Union Central*, 311 U.S. 273, is offered as Farm Debtor’s argument for rehearing, as follows:

Wright v. Union Central, 311 U.S. 275.

“* * * We granted certiorari because of the importance of the problem to the orderly administration of the Act. * * * This Act provides a procedure to effectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt. *Wright v. Union Central Ins. Co.*, Supra; *John Hancock Mutual Life Ins. Co. v. Bartels*, Supra; *Kalb v. Feuerstein*, 308 U.S. 433. Safeguards were

provided to protect the rights of secured creditors throughout the proceedings to the extent of the value of the property. *John Hancock Mutual Life Ins. Co. v. Bartels*, Supra. *Borchard v. California Bank*, 310 U.S., at p. 317, *There is no Constitutional claim of the creditors for more than that. And so long as that right is protected the creditors are certainly in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against the debtor. Rather, the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress, lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and letter of the Act* * * *

“To hold that the Court has the discretion to grant or deny the debtor’s right to redeem at the reappraised value would be to rewrite the Act so as to vest in the Court power which Congress did not plainly delegate. This discretionary power of the Court is exhausted when the court terminates the proceedings or accelerates their termination. **Such termination can be effected only pursuant to the precise procedure which Congress has provided.**”

This Court must scan the record and determine whether this “Orderly Procedure Has Been Violated.”

See: Appendix “A” p. 16a and p 17a

Under date Aug. 4, 1947 Tender for redemption.....	\$ 9,170.00
Under date Oct. 2, 1947 Tender Redeem Per. Prop.....	1,000.00
June 16, 1951 J. M. Wade Replace Ck. No. 5020.....	4,328.74
June 16, 1951 Ck. No. 6244.....	1,000.00
June 16, 1951 Ck. No. 6423.....	1,500.00
Bal. open account	2,734.43
Jan. 31, 1952 DeBord Fruit Company.....	300.00
June 11, 1952 Geo. Faskin (Crop proceeds).....	8,000.00
June 11, 1952 Revolving Fund Certificate.....	876.54
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	\$28,909.71
Appraised value of property for redemption purposes.....	25,550.00
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Surplus	\$ 3,359.71

Excess of Cash over the redemption.
Other large sums unaccounted for.

All rents and profits and under Section 75 (s) available for redemption purposes, and which this Court and the District Court has refused to recognize. A plain violation of the procedure provided by Congress.

The appointment of a trustee in General Bankruptcy is another proceeding not provided for.

This Court in its opinion of December 24, 1953, says in part, p. 4:

“We do not here decide whether the appointment of the trustee and the order of sale were proper. We hold only that the court below did not lose jurisdiction to appoint a trustee and to order a sale of the property when Beecher deposited the \$9,170.00 into the registry of the court. The question of the propriety of the appointment of a trustee is a matter for determination when appeal No. 13,693 is heard on the merits.”

Another question for determination is under Section 75. Can a farmer be adjudicated an involuntary bankrupt without notice and without trial or at all? Section 4 (b) or the Bankruptcy Act.

“(b) Any natural person except a wage earner or farmer, * * * can be adjudged an involuntary bankrupt.”

The Supreme Court in *Valley v. Northern Fire Ins. Co.*, 254 U.S. 343, at p. 351.

“Courts are constituted by authority, and they cannot go beyond the power delegated to them, if

worth State Bank, without a bond for costs and damages and without notice, secured the appointment of a receiver and dispossessed Farm Debtor of all his property including his exemptions. The prayer of that petition is as follows:

See: Transcript 10789, p. 2-5:

“WHEREFORE your petitioner prays that a receiver be appointed forthwith by this Court *for all the property of said bankrupt to protect and preserve the same for the benefit of all parties interested therein.*”

No report pursuant to foregoing was ever filed, Farm Debtor pleaded for this accounting. The profits of this Receiver Harold D. Couch, was approximately \$70,000.00, which would be far more than enough to have liquidated Debtor's indebtedness.

The District Court ruled that this sum was not available to liquidate indebtedness, and without reference to the provisions of Section 75 (s) and the court decisions herein set out, ruled that the rents and profits belonged exclusively to the creditors and were not available for application on the principal of the claims.

Section 75 (s) (3) of the Bankruptcy Act:

“At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on *principal*. Provided, that upon request of any secured or unsecured, or upon

request of the debtor, the court shall cause a re-appraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court, less payments made on *principal* for distribution to all secured and unsecured creditors as their interests may appear and thereupon the court shall by an order turn over full possession and title to said property, free and clear of encumbrance to the debtor * * *."

It is clear that the definition of principal for Frazier Lemke purposes is the appraised value. That appraised value in this instance was \$25,550.00.

These are all matters important to the orderly procedure which Congress and the Supreme Court say must be complied with. This Court has never ruled upon them.

The District Court says the money will remain in the registry of the Court until the disposition thereof has been finally decided. See Order of the District Court of June 20, 1951. The final decision by this Court is still pending with over \$100,000.00 rents and profits passing through the hands of the District Court, and only \$25,500.00 required under the Act. Section 65 of the Bankruptcy Act establishing that sum as the limit that claimants may lawfully collect. It is imperative that a rehearing be granted to relieve this proceeding of its chaotic condition.

S. P. BEECHER,
Cashmere, Wash.

Affidavit

S. P. Beecher being first duly sworn on oath deposes and says: That he is the petitioner herein, that he has prepared the attached petition for rehearing, knows the contents thereof, and that the same is presented in good faith and not for the purpose of delay and that he is entitled to the relief he seeks.

S. P. BEECHER, Farm Debtor,
Cashmere, Washington.

Subscribed and sworn to before me this 23rd day of
April, 1956.

R. J. MCKELLAR,
Notary Public in and for the State of
Washington residing at Cashmere.

Affidavit of Service by Mail

S. P. Beecher being first duly sworn deposes and says that service by mail was held as follows on the hereafter named parties: Randall and Danskin, 1017 Paulsen Bldg., Spokane, Wash.; Federal Land Bank of Spokane, Spokane, Wash.; John J. Ripple, 1705 North Division St., Spokane, Wash.; John McCoy, Peshastin, Washington; Lyle Timpe, Peshastin, Wash.; Leavenworth Fruit Company, Leavenworth, Wash.; Eagle Transfer and Storage Co., Wenatchee, Wash.; Arrow Transfer Co., Wenatchee, Wash.; Ben Maxwell, 2421 Altman St., Los Angeles, California; and Sam M. Driver, P. O. Box 1493, Spokane, Washington.

Mailing was done on Monday, April 23, 1956, in the United States Post Office in Wenatchee, Washington, in securely sealed and addressed envelopes, postage fully paid and addressed as aforesaid.

S. P. BEECHER, Farm Debtor,
Cashmere, Washington

Sworn to before me this 23rd day of April, 1956.

R. A. MCKELLAR
Notary Public in and for the State of
Washington, residing at Cashmere.

